

The Administrative Law Judge in this case had the opportunity to judge the claimant's demeanor and credibility while he was testifying at the Preliminary Hearing. The evidentiary record is conflicting as to whether claimant sustained an accident at work, when that accident is alleged to have occurred and whether the claimant's chronic degenerative neck condition was aggravated or made worse by his work with respondent. Where the evidentiary record is conflicting, the Appeals Board takes into consideration the Administrative Law Judge's opportunity to observe claimant's testimony and will give deference to his conclusions in that regard. Based upon the Appeals Board's review of the

record as a whole, including the in-person and affidavit testimony of the lay witnesses and the medical records and reports in evidence, we find that the Order by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the June 20, 1995 Order of Administrative Law Judge Floyd V. Palmer should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Diane F. Barger, Emporia, Ks
Steven C. Alberg, Overland Park, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director